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October 16, 1995

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VIA MESSENGER

Mr. William Caton

Acting Secretary

Federal Communications Commission

Room 222

1919 M Street, N.W.

Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Policies and Rules Concerning Children's Television Programming. Revision of Programming Policies for Television Broadcast Stations. MM Docket No. 93-48, FCC 95-143: Comments of the Children's Defense Fund and the Black Community Crusade for Children on Notice of Proposed Rule Making Under the Children's Television Act. Adopted April 5, 1995

Dear Mr. Caton:

Enclosed please find the original plus nine copies of the Comments of the Children's Defense Fund and the Black Community Crusade for Children on Notice of Proposed Rule Making Under the Children's Television Act, Adopted April 5, 1995, **Re: In the Matter of Policies and Rules Concerning Children's Television Programming. Revision of Programming Policies for Television Broadcast Stations. MM Docket No. 93-48, FCC 95-143.**

Sincerely

Jean F. Holloway / JFM

Jean F. Holloway
One of the Attorneys for the
Children's Defense Fund and the Black
Community Crusade for Children

enclosures

cc: James Weill, Esq.

Ms. Enole Aird

DORSEY & WHITNEY

bcc: Virginia Greenman (Interim Director; CDF-Mn)(w/enclosure)
Steven Lucke, Esq. (w/enclosure)
Jeffrey Chester (Center for Media Education)(w/enclosure)

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of

**Policies and Rules Concerning
Children's Television Programming**

**Revision of Programming Policies
for Television Broadcast Stations**

**MM Docket No. 93-48
FCC 95-143**

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**COMMENTS OF THE CHILDREN'S DEFENSE FUND
AND BLACK COMMUNITY CRUSADE FOR CHILDREN,
ON NOTICE OF PROPOSED RULE MAKING UNDER
THE CHILDREN'S TELEVISION ACT, ADOPTED APRIL 5, 1995**

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SUMMARY OF COMMENTS

The Children's Defense Fund and the Black Community Crusade for Children endorse the new regulations proposed by the Federal Communications Commission for implementation and enforcement of the Children's Television Act, 47 U.S.C. §§303(a) and (b) (1992), with the modifications that credit not be given for programs airing before 7:00 a.m. or after 10:00 p.m., a "safe harbor" be set at one hour per day of regularly scheduled programming of substantial length (i.e., thirty minutes or more), and that the broadcasters be required to identify children's programming at the time it is aired and instructions for listing it as educational programming be provided by the licensee to program guides. The Children's Defense Fund and the Black Community Crusade for Children believe that, given the documented non-compliance with the Children's Television Act since it was enacted, these new regulations are necessary to encourage further compliance and provide needed educational and informational programming for this nation's children.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	MM Docket No. 93-48
)	FCC 95-143
Policies and Rules Concerning)	
Children's Television Programming)	COMMENTS OF THE CHILDREN'S
)	DEFENSE FUND AND BLACK
Revision of Programming Policies)	COMMUNITY CRUSADE FOR
for Television Broadcast Stations)	CHILDREN, ON NOTICE OF
)	PROPOSED RULE MAKING UNDER
)	THE CHILDREN'S TELEVISION
)	ACT, ADOPTED APRIL 5, 1995

INTRODUCTION

These are the comments of the Children's Defense Fund and the Black Community Crusade for Children to the Notice of Proposed Rule Making (MM Docket No. 93-48), released on April 7, 1995, in which the Federal Communications Commission ("FCC") proposes to make changes to the current rules implementing the Children's Television Act of 1990, ("CTA"), 47 U.S.C. §§ 303(a) and (b) (1990), and, in particular, to the rules requiring that stations broadcast a certain amount of children's educational programs, see 47 C.F.R. § 73.671; 47 C.F.R. § 73.3526 (8)(iii)(1992); Report and Order, 6 FCC Rcd at 2115; Memorandum Opinion and Order, 6 FCC Rcd at 5110.

STATEMENT OF INTEREST

The Children's Defense Fund ("CDF") is a non-profit 503(c) corporation, with headquarters in Washington, D.C. and state and local offices in Minnesota, Ohio, New York City, Washington, D.C. and Bennettsville, South Carolina. CDF's mission is to provide a strong and effective voice for all the children of America, who cannot vote, lobby, or speak out for themselves. CDF pays particular attention to the needs of poor, minority and disabled children. Since 1973, CDF has worked to create a web of family, community,

private sector and government supports for children that is so tightly woven that no child can slip through. Its core belief is that no child should be left behind and that every child needs and deserves a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start with the support of caring adults and a nurturing community.

These comments are also submitted on behalf of the Black Community Crusade for Children ("BCCC"), which is coordinated by CDF. BCCC is headquartered in Washington, D.C., and has regional offices in New York, Ohio, California and Mississippi. BCCC seeks to weave and reweave the rich fabric of community that historically has been the cornerstone for the healthy development of Black children; to tap into and strengthen the Black strong community's tradition of self-help; to rebuild the bridges between the generations and between the Black middle-class and poor; to connect and galvanize current effective Black leadership around specific goals for children; and to identify, train, nurture, link, mobilize and empower a new generation of Black servant-leaders on behalf of children.

CDF and BCCC, on behalf of all children nationwide, have a strong interest in these proposed regulations. American children of all races and income levels spend approximately 20% of their waking hours (or three to four hours a day) watching television.¹ By the time the typical child goes to college, he or she will have spent more time watching television (15,000 hours) than being in the class room (11,000).² Indeed, most

¹ Federal Communications Commission ("FCC"), Notice of Proposed Rule Making, Adopted April 5, 1995, at 5-6, citing Television Audience 1993, at 14, Nielsen Media Research 1993; see also Minow, N. and LeMay, C., Abandoned in the Wasteland. Children, Television and the First Amendment, at 5, 32 (Hill and Wang, 1995 ed.).

² Notice, supra, at 6 (citations omitted); Minow, supra, at 5.

children currently spend more time watching television than they do engaging in any other educational or entertainment activity.³

Significantly, lower income and minority children will even spend more of their waking hours watching television.⁴ Lower income children are particularly dependent upon television because of their families' lack of resources, including money and transportation, to engage in other activities.⁵ Over 21% of American children, or 15.3 million of them, live in families with incomes below the federal poverty lines (approximately \$12,000/year for a family of three).⁶ Millions more live in families with annual incomes only a few thousand dollars more than that.⁷ Of these 15.3 million children living in poverty, many have televisions in their homes and watch more than 3-4 hours of television per day.⁸

The time these children spend viewing television is important to children (and CDF's and BCCC's missions) because children, particularly lower income and minority children, and preschool children, can be "strongly positive[ly]" impacted in terms of reading

^{3/} Id.; Minow, supra, at 32; Alexander K. C. Leung, et al., Children and Television, 50 American Family Physician, 909, 909 (1994).

^{4/} Minow, supra, at 32 (1994). See also J. P. Tangey and S. Feshbach, "Children's Television-Viewing Frequency" Individual Differences and Demographic Correlates, Personality and Social Psychology Bulletin, Vol. 14, 1988, pp. 145-58; Ronald Kuby and Mikail Csikszent Mikalyi, Television and the Quality of Life: How Viewing Shapes Everyday Experience (Hillsdale, N.J.; Earlbaum, 1990).

^{5/} Wright, J.C. and Aletha C. Huston, Effects of Educational TV Viewing of Lower Income Preschoolers on Academic Skills, School Readiness, and School Adjustment One to Three Years Later, May, 1995, at 16.

^{6/} March, 1995, Census Population Survey.

^{7/} The March, 1992, Census Population Survey shows that approximately 21 million, or 31.5%, of American children live in families with annual incomes of less than 150% of the federal poverty

^{8/} Minow, supra, at 32.

ability, time spent on educational activities and school adjustment by viewing educational children's programming such as Sesame Street, and "negative[ly]" impacted by time spent viewing non-educational cartoons and adult entertainment.⁹ Studies conducted since 1971 have shown that young children, and, in particular, low-income young children, who view educational programming do better regarding basic skills, academic tests, and cognitive skills than do non-viewing children.¹⁰ Further, studies show that children who spend time watching educational programming actually spend less time watching potentially "harmful" programming such as violent cartoons and adult programs.¹¹ This is significant, given that almost 3,000 studies conducted over the past few decades demonstrate that violent and advertising-based television programming and cartoon viewing, although not the only cause, are correlated with increased family violence and other negative behaviors

⁹ Wright and Huston, Effects of Educational TV Viewing, *supra* at 1-2, 16-17; Minow, *supra* at 44 and citations therein.

¹⁰ Wright and Huston, Effects of Educational TV Viewing, *supra* at 3, 4; Chen, M., Six Myths About Television and Children, *Media Studies Journal*, at 108-09 (Fall 1994); Zill, N., Davies, E., & Daly, M., Viewing of Sesame Street by preschool children in the United States and its relationship to school readiness, Rockville, Maryland, Westat, Inc. (1994); Huston, A.C., Wright, J.C., Rice, M.L., Kerkman, D., & St. Peters, M., The Development of Television Viewing Patterns in Early Childhood: A Longitudinal Investigation, 26 *Developmental Psychology*, 409-420 (1990); Huston, A.C., et al. Public Policy and Children's Television, *American Psychologist*, (February, 1989); Ball, S. & Bogatz, G.A., The Second Year of Sesame Street: An Evaluation, Princeton, New Jersey, Educational Testing Service (1971); Ball, S. & Bogatz, G.A., The First Year of Sesame Street: An Evaluation, Princeton, New Jersey, Educational Testing Service (1970). See also Report of the University of California, at Los Angeles on Television Violence at 38 (September, 1995) (documenting some positive impacts that children's television can have, such as "teach[ing] important lessons long before a child enters a classroom and inspir[ing] that child to become a good citizen and productive member of society," *id.* at 152, but observing that there is substantial room for improvement, including in the depiction of violence on children's programming).

¹¹ Wright and Huston, "Effect of Educational TV Viewing," *supra*, at 14.

among children.¹² Finally, studies show that there is a positive correlation between educational television viewing, up to a maximum of ten hours per week, and achievement in school.¹³

COMMENTS OF CDF AND BCCC

Given these data, CDF and BCCC believe that it is in the interest of children and the public as a whole for broadcasters to be held accountable for providing educational programming that will have a positive, rather than negative, impact on children. The FCC's proposed regulations impose a slight burden on broadcasters and result in a substantial direct benefit to children, and therefore to the nation. Children who are better educated and less prone to violence will become better parents, citizens, and workers. Therefore, CDF and BCCC believe that the FCC can and should adopt the proposed regulations with the modifications discussed below, as a first step in providing more educational programming for children.

Specific FCC regulations mandating that broadcasters air a specific amount of easily identifiable children's educational programming are necessary. The FCC's own research, and the research of countless other organizations, have proven that many broadcasters either cannot or will not voluntarily comply with the CTA as written and implemented through existing regulations, and that

market forces alone have produced 'disturbingly little' educational and informational programming on commercial television, that market forces were not 'sufficient to ensure that commercial stations provide educational

^{12/} Minow, *supra*, at 28; Surgeon General's Scientific Advisory Committee on Television and Social Behavior Television and Growing Up: The Impact of Televised Violence (Washington, D.C.; U.S. Government Printing Office).

^{13/} Huston, "Effects of Educational TV Viewing," *supra*, at 15.

and informational programming, and that government action to increase the availability of such programming therefore is required.’¹⁴

Studies show that, since the passage of the CTA, there has been little improvement in either the quantity or quality of children’s programming.¹⁵ When broadcasters were more heavily regulated, broadcasters provided approximately 10 hours per week of educational and informational programming for children; after deregulation and the FCC’s highly publicized plan not to monitor broadcasters, educational and information for children fell to less than two hours per week.¹⁶

As a result, CDF and the BCCC believe that the FCC should adopt the following regulations:

1. A revised definition of educational programming, requiring that such programming be broadcast between 7:00 a.m. and 10:00 p.m., “regularly scheduled” and of “substantial length.”
2. A “safe harbor” standard set at one hour per day and a requirement of annual reports to the FCC for five years.
3. A requirement that broadcasters identify educational programming by, inter alia, icon and provide the public with easy access to quarterly reports in broadcasters’ public inspection files.

Finally, the new regulations should be accompanied by swift and effective enforcement by the FCC.

^{14/} Notice, supra, at 7 (citations omitted). See also The Center for Media Education (“CME”), et al., A Report on Station Compliance With the Children’s Television Act, (September 29, 1992) (evaluating the license renewal applications of 58 commercial stations filed with the FCC in February-August, 1992); Notice of Inquiry by Federal Communications Commission, at ¶ 6 (1993) (evaluating license renewal applications and determining at that time that the level of educational programming performance was not consistent with Congress’s objectives in passing the CTA).

^{15/} CME, Report on Station Compliance, supra, at 4.

^{16/} Notice, supra, at 10, and references cited therein; Minow, supra, at 26-27, 51-52.

These proposals are consistent with the needs of the millions of children who spend hours each day watching television, do not infringe upon the First Amendment rights of broadcasters and do not impose an undue hardship on broadcasters in their free use of the public airways. Ultimately,

if we want to change it, we should not be deterred by false choices. The choice is not between free speech and the marketplace on the one hand and governmental censorship and bureaucracy on the other. The choice is to serve the needs of children and use the opportunities presented by the superhighway in the digital age to enrich their lives. If we turn away from that choice, the consequences of our inaction will be even greater educational neglect, more craven, and deceptive consumerism and inappropriate levels of sex and violence -- a wasteland vaster than anyone can imagine or would care to. Let us do for our children today what we should have done long ago.¹⁷

I THE FCC SHOULD REVISE ITS CURRENT DEFINITION OF EDUCATIONAL AND INFORMATIONAL PROGRAMMING.

The FCC proposes to revise its current definition of "educational and informational programming," arguing that "it is ambiguous and fails to give licensees clear guidance."¹⁸ The FCC proposes to define "core" educational programming as those programs that meet the following requirements:

- (1) the program is specifically designed to meet the educational and informational needs of children ages 16 and under (i.e., has education as a significant purpose);
- (2) the educational objective of the program and the target child audience are specified in writing in the children's programming report;
- (3) the program is aired between the hours of 6:00 a.m. and 11:00 p.m.;
- (4) the program is "regularly scheduled;"
- (5) the program is of a "substantial length" (e.g., 15 or 30 minutes); and

¹⁷ Minow, supra, at 15 (emphasis added).

¹⁸ Notice, supra, at 4.

(6) the program is identified as educational children's programming at the time it is aired, and instructions for listing it as educational programming are provided by the licensee to program guides.¹⁹

As a threshold matter, CDF and the BCCC believe that this definition should be adopted, with the modifications listed below. CDF and the BCCC believe that the arguments that have been raised in opposition to this new definition are specious. For example, some argue that the current definition is adequate to effectuate the goals of the CTA. The extensive evidence cited by the FCC in its Notice and provided by commentators in 1993 conclusively establishes otherwise.²⁰ In addition, the argument that the definition creates a "false dichotomy" between educational and entertainment programming lacks any merit. Nothing prohibits the broadcasters from making programming equally educational and entertaining.

CDF and the BCCC propose the following three modifications to the proposed FCC rules. First, CDF and the BCCC strongly disagree with the proposal that would permit broadcasters to claim credit for educational programming broadcast before 7:00 a.m. and after 10:00 p.m.²¹ Only a small percentage of children watch television before 7:00 a.m. and after 10:00 p.m.²² While there may be "not an insignificant number of children in the audience," "insignificant" should not be the guidepost by which the FCC enforces a statute designed to substantially increase the availability of educational programming for the largest number of children. Permitting broadcasters to claim credit for programming before

^{19/} Notice, supra, at 20.

^{20/} See, e.g., Notice, supra, at 17 and citations therein.

^{21/} Notice, supra, at 22.

^{22/} See, Notice, supra, Neilson Ratings Chart (Exhibit A).

7:00 a.m. and after 10:00 p.m. will create a very strong incentive for broadcasters to relegate much, if not all, of their required programming to these less lucrative and less viewed time slots. Most broadcasters already do exactly this.^{23/}

CDF and the BCCC also agree with the FCC that children's educational programming should be "regularly scheduled," i.e., once a week. As Commissioner Chong observed in her comments, "regularly scheduled" programming substantially increases the likelihood that both parents and their children will know when the program is aired and will actually watch the programs designed as educational and informational. Moreover, the predictability of regularly scheduled programming enhances the ability of parents to supervise what their children are actually watching.

CDF and the BCCC believe that educational programming should be of "substantial length," i.e., no less than 30 minutes. The success of many children's educational programs such as Sesame Street, Bill Nye, The Science Guy, and Barney, has demonstrated conclusively that there is no merit to certain broadcasters' arguments that children have too limited attention spans for educational programming of substantial length. Further, research demonstrates that shorter segments are far less effective in communicating education and information than one-half-to one hour programming.^{24/} Short segments of several minutes or less that are embedded in otherwise non-educational programs should not be credited as meeting a broadcaster's obligations under the CTA, for the value of such short "spots" is likely to be lost or ignored in the overall context of the program.

^{23/} Minow, supra at 11 (60% of shows claimed by broadcasters to meet the requirements of the CTA air before 7:00 a.m.).

^{24/} See Comments of APA at 2-3 (May 8, 1993).

II. THE FCC SHOULD ESTABLISH A 'SAFE HARBOR' STANDARD OF ONE HOUR PER DAY AND SHOULD REQUIRE ANNUAL REPORTS FOR FIVE YEARS.

The FCC proposes to establish a "safe harbor" quantitative standard, which would specify an amount of educational programming that would represent one means of satisfying the CTA's programming obligation. CDF agrees that the FCC should establish a "safe harbor" quantitative standard. However, CDF and the BCCC believe that the standard should be set at one hour per day and not three hours per week, as proposed. One hour per day is a minimal burden on broadcasters, given that it constitutes 4% of a licensee's total daily programming, and 6% of its programming between the hours of 7:00 a.m. and 10:00 p.m. However, such a standard greatly improves children's options for television viewing. If each commercial station chose to meet the one hour per day requirement, most children would have available to them at least 28 hours of educational and informational broadcasting each week.

In addition to the standard, the FCC should also monitor the amount of broadcasted programming specifically designed to serve the educational and informational needs of children. CDF and the BCCC strongly agrees that the FCC must conduct this monitoring, but believes that it should be conducted on an annual basis for a period of five years and not three years as proposed. As part of this monitoring, stations would be required to submit annual descriptions of their educational and informational programming. CDF believes that these mechanisms are necessary to ensure that broadcasters increase their educational programming.

III. THE FCC SHOULD REQUIRE THAT BROADCASTERS IDENTIFY EDUCATIONAL PROGRAMMING AND PROVIDE THE PUBLIC WITH EASY ACCESS TO REPORTS IN THEIR PUBLIC INSPECTION FILES.

The FCC proposes to require broadcasters to identify educational programming to assist adults and children in locating these programs. CDF agrees that broadcasters should be required to publicize educational programming in materials provided to publishers of television schedules and to identify their programs at the time they are aired. CDF and the BCCC, however, believe that the FCC should go further and require broadcasters to identify each qualifying program by an icon visible throughout the broadcast of the program and when the program is pre-advertised. Australia has already successfully implemented such a program.²⁵ Parents and children should be able to identify programs as educational or informational when they are pre-advertised, at the beginning of the program and throughout the show.

CDF and the BCCC agree that the FCC should also issue regulations which ensure that the public has access to quarterly reports in broadcasters' public inspection files. CDF and the BCCC agree with the FCC proposal that these reports should be separately maintained to provide parents and advocates with the most effective, time-efficient method for reviewing a broadcaster's programming. Indeed, the entire process could be greatly facilitated if the FCC were to adopt a standard form that broadcasters fill out each quarter, detailing the efforts they have made to comply with the CTA, including the total number of hours of core programming, a list of the programs they claim are educational, and other efforts the broadcasters have undertaken to increase educational programming. CDF and the BCCC also agree that broadcasters should be required to provide a description

^{25/} See The Office of Film and Literature Classification and Australian Broadcasting Authority, Classification Issues. Film, Video & Television Monograph, at 36 (1993).


of how particular programs they are claiming are educational or informational qualify. That explanation, while "brief," must provide sufficient detail on how the program qualifies to enable the public to make a reasoned determination if the broadcasters' claims are justified.

CONCLUSION

In light of the foregoing, CDF and the BCCC urges the FCC to adopt its proposed regulations, with the modifications set forth above.

Dated: October 16, 1995

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